



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**Divorce Cause 2 of 2009**

J.M.N .....PETITIONER

*Versus*

E.N.M.....RESPONDENT

**J U D G M E N T**

On 6<sup>th</sup> February, 2009, **J.M.N**, hereinafter referred to as “*the petitioner*” initiated this petition for Divorce against one, **E.N.M**, hereinafter referred to as “*the respondent*”. In the said petition the petitioner claimed that she on 15<sup>th</sup> April, 2005 solemnized her marriage to the respondent at the District Commissioner’s Office, Laikipia. Following their marriage, they cohabited at Nanyuki. Their marriage was however not blessed with any issues. The petitioner is seeking to dissolve the aforesaid marriage on the grounds of Desertion, cruelty and adultery on the part of the respondent.

On desertion the petitioner claims that since September, 2005 when the respondent forced her to vacate the matrimonial home, they have not resumed cohabitation. They have since been residing separately. Due to the said desertion, there has been no conjugal relationship between the two.

On cruelty, the petitioner takes the view that the respondent has since the celebration of the marriage directed unkind and cruel verbal insults to her which insults were calculated to strip and undermine the petitioner’s self-worth. The respondent too had on several occasions physically assaulted her.

On adultery, it is the petitioner’s contention that the respondent has had several affairs with women known and unknown to her. This adultery has caused the petitioner unbearable pain and agony.

The petitioner also accuses the respondent for having failed to disclose to her at the time of their marriage that he had been involved in two previous marriages under Kikuyu Customary Law to one, **C.W** and **C. N** respectively. The respondent’s failure to disclose to the petitioner these vital information amounted to dishonesty.

As a consequence of the desertion, cruelty and adultery aforesaid, the marriage had irretrievably broken down. Hence this petition. In seeking the dissolution of the marriage on the above grounds, the petitioner had not been accessory to, connived at or condoned the desertion, cruelty and adultery complained of nor had she colluded with the respondent in presenting this petition.

The petition was duly served on the respondent. Though served as aforesaid, the respondent neither appeared nor filed an answer to the same. Accordingly, the petitioner proceeded to fix the divorce cause for hearing ex-

parte. However, I note that the cause was set down for hearing rather prematurely as the registrar's certificate had not been applied for nor obtained. The petitioner is a lay person and was acting in person. That omission is thus in my view excusable.

At the hearing of the cause only the petitioner testified. She merely reiterated what she had stated in her petition. Suffice to add that she abandoned all the other grounds she had advanced in the petition save for desertion. It was her testimony that the respondent chased her from the matrimonial home in September, 2005 and since then they have not cohabited as man and wife. She had filed this cause on 6<sup>th</sup> February, 2009 a period in excess of 3 years since her husband forced her out of their matrimonial home. There had been no attempts at reconciliation. Accordingly the marriage had irretrievably broken down.

On the unchallenged and uncontroverted evidence of the appellant, I find that the respondent constructively deserted the petitioner sometimes in September, 2005. The respondent made the life of the petitioner in the matrimonial home so unbearable that she was forced to leave. Infact he chased her away from the matrimonial home. In those circumstances, it is not the petitioner who is in desertion. Rather it is the respondent constructively though.

The law allows a partner to sue for divorce on grounds of desertion provided he/she is able to prove that 3 years of desertion had elapsed by the time the divorce petition was filed. According to the petitioner, the respondent deserted her in September, 2005. The petition herein was field on 6<sup>th</sup> February, 2009. Clearly therefore 3 years of desertion had elapsed by the time the petitioner came to court by way of this petition. Evidence on record suggests that there has been no attempts at all at reconciliation. One would imagine that the respondent having chased the petitioner from the matrimonial home would be first to seek her out for purposes of reconciliation. It appears that this has not been the case here. The marriage between the two in my view, therefore has irretrievably broken down. No useful purposes would be served by maintaining the same which is a charade. Accordingly I grant the petitioner's wish. The marriage hitherto existing between the petitioner and the respondent is hereby dissolved. A decree Nisi shall forthwith issue to be made absolute within the statutory period. I make no order as to costs.

*Dated and delivered at Nyeri this 25<sup>th</sup> day of January, 2010.*

**M.S.A. MAKHANDIA**  
**JUDGE**